

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FARBERWARE LICENSING COMPANY,)
LLC,)
Plaintiff,)
vs.)
MEYER MARKETING CO., LTD.,) No. 09 CV 2570
MEYER INTELLECTUAL) (HB and MHD)
PROPERTIES, LTD., and MEYER)
CORPORATION, U.S.)
Defendants.)

The deposition of HAL L. PORET, called for
examination pursuant to the Rules of Civil
Procedure for the United States District Courts
pertaining to the taking of depositions, taken
before GINA M. LUORDO, a notary public within and
for the County of Cook and State of Illinois, at
195 Broadway, New York, New York, on the 20th day
of July, 2009, at the hour of 8:59 a.m.

Reported by: Gina M. Luordo, CSR, RPR, CRR

License No.: 084-004143

1 APPEARANCES:

2 BUSHELL, SOVAK, OZER & GULMI, LLP,

3 BY: MR. CHRISTOPHER J. SOVAK

4 60 East 42nd Street, Suite 2925

5 New York, New York 10165

6 (312) 949-4700

7 Representing the Plaintiff;

8

9 DYKEMA GOSSETT PLLC

10 BY: MR. TIMOTHY K. SENDEK

11 10 South Wacker Drive, Suite 2300

12 Chicago, Illinois 60606

13 (312) 876-1700

14 Representing the Defendants.

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24 Also Present: Mr. Gary T. Ford

1 the population of the United States?

2 A. You mean is the relevant universe?

3 Q. Universe.

4 A. No.

5 Q. So the relevant universe in this case is

6 not the population as a whole of the United States?

7 A. Correct.

8 Q. Is it correct that the relevant universe

9 in this case is potential purchasers of the goods

10 shown in the advertising stimulus used in the

11 survey?

12 A. Yeah, if by goods you mean the unit, the

13 package.

14 Q. Right, potential purchasers of the item or

15 bundle of items shown in the Farberwarecookware.com

16 product page.

17 A. Yes.

18 Q. Potential purchasers of that are the

19 relevant universe?

20 A. Yes.

21 Q. If you flip to Appendix B to your report,

22 respondent composition data --

23 A. Yes.

24 Q. -- and look at the lower table, the table

1 the answer to both of those questions. The other,
2 there are -- for likelihood of confusion, it's
3 accepted to be typically a forward-looking inquiry.
4 You know, in other words, when somebody is talking
5 about an injunction, you're usually looking at
6 future likelihood of confusion, and courts have,
7 therefore, said it's future purchasers that are
8 important, you know, as opposed to past purchasers.
9 But on the other hand, market researchers often say
10 past behavior is a good predictor of future
11 behavior, so some market researchers, even if what
12 they want to know is are these future purchasers,
13 they would prefer to ask past as a predictor of
14 future. So it's kind of common to ask both.

15 The other issue is if you have a case
16 where -- well, whether damages are potentially
17 involved, damage is, obviously, based on things
18 that have occurred in the past, so sometimes you
19 also ask about the past if damages are relevant.

20 Q. You said researchers often say that past
21 behavior is a good predictor of future behavior.
22 Isn't it true that researchers, in fact, say that
23 past behavior can be a better indicator of future
24 behavior than self-reported future behavior?

1 that people do buy repeatedly, but it's not so -- I
2 don't have knowledge to tell me exactly what the
3 cycle -- how often pots and pans are replaced
4 versus other items. So I don't feel I necessarily
5 have the ability to say such specific knowledge
6 about cookware patterns that I could say one or the
7 other is better. It's part of the reason why I
8 asked both was to be safe.

9 Q. Do you have any particular expertise in
10 cookware buying patterns?

11 A. No.

12 Q. Do you have any particular expertise in
13 cookware marketing?

14 A. No.

15 Q. Or marketing in general?

16 A. Well, just my survey research expertise.

17 Q. So apart from expertise in survey
18 research, you don't have any marketing expertise?

19 A. No.

20 Q. Part of screening for whether respondents
21 had in the past 12 months or would likely in the
22 next 12 months purchase kitchenware, you also asked
23 whether they would consider purchasing anything
24 over the internet; is that correct?

1 A. Yeah.

2 Q. And that -- on that basis, you eliminated
3 people who said they would not?

4 A. Yes.

5 Q. And people who said they would consider
6 purchasing kitchenware over the internet were
7 screened for the survey or were used for the
8 survey?

9 A. Yes.

10 Q. Did you ever ask people if they had
11 purchased anything over the internet?

12 A. No.

13 Q. Do you have any way of knowing with
14 respect to all of the respondents of your survey if
15 any of them had ever purchased anything over the
16 internet?

17 A. Yes.

18 Q. What's that?

19 A. I have the fact that I asked the -- that
20 the people who participated in the study were
21 people who said they would consider purchasing over
22 the internet, and, obviously, out of 400 plus
23 people who said they would consider purchasing
24 something over the internet, obviously, many people

1 of those people would be people who have purchased
2 something over the internet before.

3 Q. So your basis for saying that some of
4 those people had purchased something over the
5 internet is based on your assumption that because
6 they all answered yes to this question, some of
7 them must have?

8 A. Well, it's not even a requirement that
9 they purchase something over the internet before,
10 but if you wanted to know -- if you really wanted
11 to analyze whether these people had purchased
12 anything before, it would be ridiculous to say
13 that, you know, 440 people in America now who say I
14 would consider purchasing kitchenware over the
15 internet have never bought an item over the
16 internet before.

17 Q. You can't say that for a fact, though, can
18 you?

19 A. I can say it for as much of a fact as
20 anything is a fact.

21 Q. Is there any one person who you can point
22 to, any one respondent that you can identify as
23 having ever purchased anything over the internet?

24 A. No, not on an individual respondent

1 because that question wasn't in there.

2 Q. Is there any one respondent that you can
3 identify had ever purchased kitchenware over the
4 internet?

5 A. No.

6 Q. Can you say for a fact that any of the
7 respondents have ever purchased kitchenware over
8 the internet?

9 A. Again, I would think -- I would say it's
10 close to a fact as possible that when you ask all
11 these people this question of would you consider it
12 and that question was highly effective in weeding
13 out people who said no, I wouldn't consider it, it
14 seems inconceivable to me that all of these people
15 were people who had never done it before.

16 Q. So as close to a fact as possible meaning
17 that you think it's a strong likelihood?

18 A. Meaning that the scientific method is
19 based on doing science and drawing -- basing things
20 on things that are considered fact by science or
21 just things that are very high probability.

22 Q. But as close as a fact as possible, you
23 mean not actually a fact. You can't say it is a
24 fact?

1 replace their utensils or had replaced their
2 utensils, they would say yes to both questions or
3 yes to either question?

4 A. Yes, and they would be relevant.

5 Q. But they would not be a potential
6 purchaser of pots and pans?

7 A. I guess according to your definition, not
8 in the next 12 months, but it's not as if the next
9 12 months is some magical limit that makes somebody
10 irrelevant or relevant.

11 Q. Based on your screening questions, you
12 can't tell if they're a potential purchaser of pots
13 and pans in the next 12 months or in the
14 foreseeable future?

15 A. I'm not -- you mean -- you're talking
16 about just pots and pans?

17 Q. Sure.

18 A. I guess the right answer is you can't --
19 you don't know if pots and pans specifically is
20 something they bought, they're going to buy in the
21 next 12 months, but you can tell that they are a
22 purchaser of the types of items that make them
23 relevant to show this product to.

24 MR. SENDEK: Let's take a break.

1 the internet, and it struck me -- I certainly saw
2 some high-end things that were a lot more
3 expensive, and I saw a few things that seemed a bit
4 cheaper, so it struck me to be somewhat a middle
5 range.

6 Q. Middle range in terms of price?

7 A. That was my impression, but you're just
8 asking me my impression. I'm not saying any of
9 this has any connection to the survey.

10 Q. And that impression that it's a
11 middle-range price cookware line is based on the
12 internet searching you did to prepare for this
13 survey?

14 A. It's based on coming across things in
15 places like Williams Sonoma. I think I saw things
16 like All Clad that seemed a good deal more
17 expensive, and I've certainly seen things that
18 seemed to be much more cheaper product. That's
19 just my impression.

20 Q. So it's not based on any sort of
21 analytical determination of prices and where this
22 falls in between of what prices are out there?

23 A. No. I would only do that if I thought it
24 was a product that was in a price range that was so

1 specialized that consumers really needed to be
2 screened for a price.

3 Q. How did you screen for consumers that
4 might be shopping for cookware in a price range
5 other than where Farberware falls?

6 A. I'm not sure what you mean.

7 Q. Did you do anything to screen potential
8 purchasers of cookware who might be potential
9 purchasers of cookware, but in a price range
10 outside of where Farberware is?

11 A. No, because somebody should not be
12 excluded from a survey on the basis that they might
13 be shopping for something more expensive.

14 Q. So if someone is a potential purchaser
15 of -- let's say one of the -- let's say there's a
16 potential purchaser who only buys high-end
17 cookware, would they have been screened out from
18 responding to your study?

19 A. No.

20 Q. And if there is a potential purchaser who
21 only buys very cheap cookware, would they be
22 screened out from your study?

23 A. No, nobody would be screened out based on
24 what you're talking about in terms of price.

1 (Whereupon, PORET Deposition
2 Exhibit No. 7 was marked for
3 identification.)

4 BY MR. SENDEK:

5 Q. Looking at what I'll call the home page of
6 Appendix F, which is the Farberwarecookware.com web
7 page, is it correct that if you click on the link
8 products next to the main name Farberware, it will
9 take you to this page of Exhibit 7?

10 A. Yes. You've refreshed my recollection.
11 Now seeing this page, I do recall there are two
12 pages in between the ones that I show this one
13 that's for Farberware products, and then clicking
14 on sets would bring you to another page that shows
15 Farberware sets. And I made the decision not to
16 show all of these pages so as to not just be
17 bombarding people with the name Farberware. That
18 was the reason.

19 Q. I'll also hand you what I'll mark as Poret
20 Exhibit 8, which is another page from the website.

21 (Whereupon, PORET Deposition
22 Exhibit No. 8 was marked for
23 identification.)

24

1 that's the subject of your survey?

2 A. Well, I can say that if somebody came to
3 the home page, they would have to go through these
4 two intermediate pages, but if somebody landed
5 directly on the page of sets or the page with the
6 end product, then they wouldn't. And given that
7 things could happen a couple of ways, I did it the
8 way that was the most favorable to Meyer.

9 Q. You agree, though, that no one would ever
10 see it as the way it was presented in the survey,
11 which was the home page immediately followed by the
12 product page?

13 A. Yes, I agree with that.

14 Q. If you look at the exhibit that was marked
15 as Exhibit No. 8, which is a partial view of all
16 the sets you would see or might see, do you see
17 that some of the sets have utensils and some of
18 them don't?

19 A. Yes.

20 Q. And do you also see that with respect to
21 the ones that have utensils, some of the utensils
22 are called out in a separate box, and sometimes the
23 utensils are not called out in a separate box?

24 A. Yes.

1 Q. So respondents to your survey did not have
2 an opportunity to see that?

3 A. Well, they had an opportunity to see the
4 utensils only called out in a separate box.

5 Q. So they didn't have an opportunity to see
6 sets without utensils, correct?

7 A. They did not see this Exhibit 8. It's as
8 clear as that.

9 Q. Did they see any cookware sets without
10 utensils?

11 A. No.

12 Q. Did they see any cookware sets with
13 utensils where the utensils weren't called out in a
14 separate box?

15 A. No.

16 Q. Do you know how people typically behave
17 when they go to a site like Farberwarecookware.com
18 and shop for cookware?

19 A. That's too vague to answer, but my best
20 answer is I don't have specific knowledge about how
21 people behave on that specific site.

22 Q. For example, do you know whether or not
23 they're likely to look around at different products
24 before settling on one to buy or if they just go

1 straight to one product and buy it?

2 A. I do not know. I would assume that people
3 look at multiple products, but all I could do as a
4 survey expert is do what I think is the most
5 defensible. There, obviously, are a variety of
6 things that consumers could do in the real world,
7 and I did the situation that is the least
8 potentially confusing.

9 Q. So like you said, you would assume that
10 the typical visitor would look at multiple
11 products. If they were shopping for cookware sets,
12 would they look at multiple cookware sets?

13 A. My prediction is most people would look at
14 multiple sets and that that would increase their
15 tendency to be confused. And by me skipping that
16 step, I was, again, bending over backwards to give
17 them the chance to not be confused.

18 Q. And when they looked at multiple sets,
19 they would have the opportunity to notice, again,
20 that some of the sets have utensils and some of
21 them don't, correct?

22 A. Yes.

23 Q. And they would have the opportunity to
24 notice that some of these sets with utensils have

1 Q. What highly technical sophisticated
2 distinction do you think I'm suggesting?

3 A. You're suggesting that somebody
4 deduce by the way utensils aren't circled in one
5 case and are circled in another case that the
6 utensils come from different sources when somebody
7 who looks at this page is just being bombarded with
8 Farberware set, Farberware set, Farberware set over
9 and over and over again. I believe it's
10 inconceivable that what you're suggesting could
11 arise beyond that bombardment of the Farberware
12 mark.

13 Q. If I were suggesting this, which is if
14 people saw the cookware sets where the utensils are
15 not in a box and then saw the cookware sets where
16 the utensils were in a box, might they arrive at
17 the conclusion that when they're not in the box,
18 they're from the same source as the cookware and
19 when they are in the box, they're from different
20 sources?

21 A. That's what I'm calling a technical and
22 sophisticated deduction or assumption, and what I'm
23 saying is I think it's extremely unlikely that a
24 respondent would have gone through a thought

1 attention.

2 BY MR. SENDEK:

3 Q. So when I say the disposition of the
4 validation results by market and interviewer, would
5 you understand what I'm asking for?

6 A. I understand you to be asking for the
7 validation sheet, which shows -- which would show
8 the respondent's name and address and telephone
9 number, and then there would be a recording of
10 whether they were reached or whether they were not
11 reached. And if they weren't reached, how many
12 attempts were made to call them and what happened
13 during those attempts.

14 To do the analysis you would like to do,
15 though, you would need to match up that validation
16 sheet to the certification pages and the
17 certification page to the questionnaire. So in
18 other words, you would have to look on the
19 validation sheet and see Tom Jones was reached and
20 find the certification page for Tom Jones and see
21 what interviewer and market Tom Jones was from.
22 And with all of that, you could do this analysis.

23 In theory, I have no objection to allowing
24 you to do that other than the turning over of the

1 respondent personal information, which is a thorny
2 issue. And if that were going to happen, we would
3 have to work out some way that's really legitimate
4 to do that.

5 Q. So in terms of the physical documents, we
6 would be talking about what you termed the
7 validation sheet and the certification pages; is
8 that correct?

9 A. Yes, that's what would be needed.

10 Q. Is the validation sheet really just one
11 sheet, or is it a collection of documents?

12 A. There would be multiple pages because
13 there's over 400 respondents.

14 Q. But you would consider it one document?

15 A. Yeah, it's one document.

16 MR. SENDEK: Joe, is that specific enough?

17 MR. GULMI: The validation sheet?

18 MR. SENDEK: And the certification.

19 MR. GULMI: And the certification pages, that's
20 what you want me to produce.

21 BY MR. SENDEK:

22 Q. Would you agree that -- understanding you
23 have some concerns about privacy for the individual
24 respondents turning over the certification pages,